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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/692,418	10/23/2003	William Kress Bodin	AUS920030250US1	8494
34533	7590	01/12/2009	EXAMINER	
INTERNATIONAL CORP (BLF) c/o BIGGERS & OHANIAN, LLP P.O. BOX 1469 AUSTIN, TX 78767-1469			TAYLOR, NICHOLAS R	
ART UNIT	PAPER NUMBER			
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/692,418	<b>Applicant(s)</b> BODIN ET AL.
	<b>Examiner</b> Nicholas Taylor	<b>Art Unit</b> 2441

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 09 December 2008.

2a) This action is FINAL.      2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-18 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 1-18 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on 09 March 2004 is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) Notice of References Cited (PTO-892)  
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)  
 3) Information Disclosure Statement(s) (PTO-166/08)  
 Paper No(s)/Mail Date \_\_\_\_\_

4) Interview Summary (PTO-413)  
 Paper No(s)/Mail Date \_\_\_\_\_

5) Notice of Informal Patent Application  
 6) Other: \_\_\_\_\_

### **DETAILED ACTION**

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114.

Applicant's submission filed on December 9th, 2008, has been entered.

2. Claims 1-18 have been presented for examination and are rejected.

#### ***Response to Arguments***

3. Applicant's arguments filed December 9th, 2008, have been fully considered but they are deemed not persuasive.

4. In the remarks, applicant argued in substance that:

(A) The prior art of McCarthy fails to teach measuring and determining effects on a user's physical condition. "Physical condition" is defined in applicant's specification as a quantifiable aspect of a user's condition such as temperature, heart rate, blood pressure, location or galvanic skin response. McCarthy does not disclose devices that

affect a particular physical condition of a user, instead merely delivering personalized web content to a user.

As to point (A), McCarthy teaches a measurement and recommendation system that determines, *inter alia*, "behavioral responses and physiologic parameter responses" that are stored in records (see abstract). These are used to measure the effectiveness of particular devices and stored as effectiveness records (see, e.g., fig. 9 physiological server databases). Example physiological parameters (i.e., physical conditions) are shown on fig. 7, including physical temperature (331, 336), voice stress levels (337), heart rate (339), and location (334).

(B) The prior art of McCarthy further fails to disclose a domain as claimed. The previous rejection cited a portion of McCarthy that merely discloses a browser, and not the claimed compatible services gateway hosting a mediation layer that is a set of services for administering devices based on measured indications.

As to point (B), McCarthy teaches the creation of effectiveness records that are created in a domain with devices that includes a services gateway that is coupled for communication to metric sensors and can administer devices based on the indications (see mediation layer 50 of fig. 9 that runs, e.g., the services listed on the left hand side of fig. 7 which are based on measured indications of user conditions). McCarthy's first domain that is necessarily connected to metric sensors, among other reasons, to

"preserv[e] the website's efficient operation" (see col. 26, lines 1-6). It is further noted that nothing in the present claim language precludes the use of particular gateway hardware or software implementations that are within a broadest reasonable interpretation of the present claim language.

***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

6. Claims 1-18 are rejected under 35 U.S.C. 102(e) as being anticipated by McCarthy et al. (U.S. Patent 6,904,408).

7. As per claims 1, 7, and 13, McCarthy teaches a method for improving the devices in a domain, the method comprising:

receiving, within a network, a plurality of device effectiveness records for a first user created in a first domain, each device effectiveness record including information

used to evaluate whether particular actions by respective devices were effective in affecting a particular physical condition of the first user, (McCarthy, see user condition metrics and records of col. 31, lines 1-37; col. 34, lines 17-30, fig. 7; col. 40, lines 38-53; and col. 35, line 50 to col. 36, line 8, that evaluate the particular condition of a first user in a first domain and produce device effectiveness records)

the first domain including a first compatible services gateway coupled for data communications to metric sensors that measure indications of the first user's physical condition, the first compatible services gateway hosting a first domain mediation layer that is a set of services for administering devices based on the measured indications of the first user's condition;(McCarthy, see mediation layer 50 of fig. 9 that runs, e.g., the services listed on the left hand side of fig. 7 which are based on measured indications of user conditions)

storing the plurality of device effectiveness records; (McCarthy, e.g., see fig. 9 physiological server databases)

selecting a device that was effective in affecting the first user's physical condition in dependence upon the plurality of device effectiveness records; and notifying a second user in a second domain that the selected device was effective in affecting the first user's physical condition to allow the second user to benefit from the effectiveness of the selected device by upgrading the second domain to include a second domain device that matches the selected device (McCarthy, col. 37, lines 9-65; col. 41, lines 10-30; col. 34, lines 16-30 where a second user in a second domain is notified and a second device is included that matches the selected device).

8. As per claims 2, 8, and 14, McCarthy teaches the system further wherein selecting a device that was effective in affecting the first user's condition in dependence upon the plurality of device effectiveness records comprises comparing at least two device effectiveness records (McCarthy, col. 37, lines 9-65; col. 41, lines 10-30; col. 34, lines 16-30 where the records are compared and mined for use in the system).

9. As per claims 3, 9, and 15, McCarthy teaches the system further wherein selecting a device that was effective in affecting the first user's condition in dependence upon the plurality of device effectiveness records comprises mining the plurality of device effectiveness records (McCarthy, col. 37, lines 9-65; col. 41, lines 10-30; col. 34, lines 16-30 where the records are compared and mined for use in the system).

10. As per claims 4, 10, and 16, McCarthy teaches the system further wherein an effective device ID identifies a new device for the user (McCarthy, col. 37, lines 9-65; col. 41, lines 10-30; col. 34, lines 16-30).

11. As per claims 5, 11, and 17, McCarthy teaches the system further wherein an effective device ID identifies an upgrade for an existing device for the user (McCarthy, col. 37, lines 9-65; col. 41, lines 10-30; col. 34, lines 16-30, e.g., recommending a better device).

12. As per claims 6, 12, and 18, McCarthy teaches the system further comprising creating a device effectiveness record (McCarthy, see user condition metrics and records of col. 31, lines 1-37; col. 34, lines 17-30, fig. 7; col. 40, lines 38-53; and col. 35, line 50 to col. 36, line 8, that evaluate the particular condition of a first user in a first domain and produce device effectiveness records).

### ***Conclusion***

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nicholas Taylor whose telephone number is (571) 272-3889. The examiner can normally be reached on Monday-Friday, 8:00am to 5:30pm, with alternating Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rupal Dharia can be reached on (571) 272-3880. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/NT/

Art Unit: 2441

Nicholas Taylor

Examiner

Art Unit 2441

/Larry D Donaghue/

Primary Examiner, Art Unit 2454